CA 1339/97 (2)

Division Bench

-188/(Jail)
P.R.—5,000-9-

CF0000061571

High Court of Madhya Pradesh
JABALPUR
Received on 26 JUN 97
Registration No. 104
Section Clerk
High Court Jabalpur

APPEAL OF PRISONER

~~1304~~ 40 Name रतिराम

her's name बोरबू

Residence पुरकेला थाना अम्बिकापुर Age 35 वर्ष

Sentenced to आजीवन कारावास on जिला एवं सत्र न्यायाधीश अम्बिकापुर

Under section 302 भादवि by सरगुजा

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 05-05-97

3 Date on which Appeal sent 06-05-97

4 Whether the prisoner wishes to be represented or not -- Yes/No.

No. ~~1304~~ 40 Name रतिराम

Continued in 05-05-97 Jail Ambikapur

No. 1304 dated 06-05-97 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

सलग्न निर्णयप्रति 4 पन्ने

Superintendent Central / Dist. / Sub-Jail

Date of receipt in C. J. M.'S Office 17-6-97

Date of receipt of record to accompany 17-6-97

Memo of Appeal of the Appeliate Court. High Court of M.P.

No. Dated 17-6-198 97

Forw High Court of M.P.

Da

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App 1339/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-4-2006

Mrs. Indira Tripathi, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Ravindra Agarwal, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. appellant-Ratiram has questioned the legality and correctness of judgment of conviction & order of sentence dated 5th May, 1997 passed by learned Sessions Judge, Ambikapur in Sessions Trial No.325/95, whereby learned Sessions Judge convicted the accused/appellant under Section 302 of the I.P.C. for causing death of Anukram and sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that on 5.7.1995 Dhansai lodged the Dehati Nalishi (Ex.P-1) in the Police Station Ambikapur to the effect that on 3.7.1995 at about 4 p.m. he along with Kallu, Brajesh was sitting in the house of Ronha, at that time Bambad came and informed that in the kitchen garden Ratiram has assaulted Anukram with the spade. On hearing this, three of them went to the site, saw that Anukram was lying in an unconscious state in the kitchen garden of Ronha and there was injury on the head of Anukram. Ratiram assaulted him with the intention to cause his death. He brought Anukram

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Ambikapur for treatment and got him admitted in Government Hospital, Ambikapur. Since he was busy in the treatment of his son, he was not able to lodge the report and now he has come, therefore, case be registered. Based on the Dehati Nalishi, F.I.R. (Ex.P-9) was registered for commission of offence under Section 307 of the IPC. However, in the meantime, on 6.7.1995 Anukram succumbed to the injury in Government Hospital, Ambikapur, therefore, the offence was converted into Section 302 of IPC. The Investigating Officer after giving notice (Ex.P-5) to the Panchas prepared the Panchnama (Ex.P-6) of the body of Anukram. In the District Hospital, Ambikapur, Dr. M.K. Jain (PW-7) conducted the post-mortem and prepared the post-mortem report Ex.P-7 in which he opined that cause of death was head injury. During police custody, accused gave memorandum (Ex.P-2) about the weapon of offence-spade and in pursuance of that he got recovered the same under Ex.P-3. The blood stained soil and plain soil was taken into possession from the place of occurrence under Ex.P-4. The Investigating Officer sought opinion of the doctor under Ex.P-11 as to whether the injury found on the head of deceased can be caused by the weapon of offence i.e. spade and the doctor gave his opinion Ex.P-8 that the injury found on the frontal bone of the child can be caused by the spade. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar under Ex.P-13 where report Ex.P-14 was received.

After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur for trial.

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The prosecution in order to establish charge against the accused/appellant examined ten witnesses. Statements of accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.

Learned Sessions Judge after hearing the arguments of counsel for respective parties convicted and sentenced the accused/appellant herein as mentioned in para 1 of this judgment.

We have heard learned counsel for the parties.

Homicidal death of Anukram is not in dispute.

As far as involvement of the accused/appellant herein in commission of crime in question is concerned, PW-5 Bukli Bai has stated in her evidence that on the fateful day at about 4 p.m. she was working in her kitchen garden, Ratiram was working in his kitchen garden and Anukram (since deceased) & Bambad were playing in the kitchen garden of Ronha. She saw that Ratiram assaulted Anukram twice with the spade on his head as a result of which Anukram fell down. Bambad shouted and went to call Dhansai. In the cross-examination she has stated that she had not gone near Anukram, she saw the incident from the place where she was standing. It is incorrect to say that she had not witnessed the incident. PW-4 Khori Bai in examination-in-chief has corroborated the evidence of PW-5 Bukli Bai, but somehow she turned hostile in the cross-examination. She has stated in her cross-examination that she had

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not seen the accused assaulting the deceased with the spade, she came to know only when her grandchild came and informed her. PW-3 Kalluram has stated in his evidence that he saw Anukram in an unconscious state, there was injury on his head and he was lying in the kitchen garden of Ronha. PW-2 Parasram has stated in his evidence that in the evening he was at his residence, at that time Dhansai, father of Anukram, came and informed that Ratiram has attacked Anukram. Thereafter, he went along with Dhansai and saw Anukram, he was unconscious and there was injury on his head. Thereafter, he called Ratiram at his residence and there Ratiram disclosed that since Dhansai gave the paddy of levy in small quantity, therefore, he assaulted his son Anukram. He also disclosed that he assaulted Anukram with the spade on his head. Thereafter, Pilaram, Ujral, Adil and other persons came on the scene. After one or two days, the police came and enquired about the incident. PW-1 Dhansai, who lodged the report and father of deceased, has stated that on the fateful day when he was sitting with Kallu & Brajesh his elder son Bambad came and informed that Ratiram has assaulted Anukram with the spade on his head and he is lying in the kitchen garden of Ronha. On hearing this, he went to the place and saw that Anukram was lying on the ground in an unconscious state, there was injury on his head and blood was oozing out of the injury. The accused was also standing in the kitchen garden of his house and on seeing him, he started throwing stones towards him.

Learned counsel for the accused/appellant argued that the incident is said to be occurred on 3.7.1995, whereas, Dehati Nalishi (Ex.P-1) was lodged on 5.7.1995 with a delay of two days, therefore, the case is doubtful.

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It is settled law that delay in lodging the report is fatal only when the time between the incident and lodging of report has been utilized for framing of the case or creating the false evidence. In the Dehati Nalishi (Ex.P-1) Dhansai has categorically mentioned that since Anukram was injured, he took him to the hospital for treatment and till lodging of report he was busy in looking after Anukram, therefore, the delay has occasioned. Looking to the evidence available on record and also the facts and circumstances of the case, we are satisfied that the delay has not been caused on account of foisting a false case on the accused, therefore, we do not find any substance in the argument advanced by learned counsel for the accused/appellant.

She further argued that the evidence of PW-5 Bukli Bai is not trustworthy, for the reason that she has stated that accused assaulted Anukram twice, but as per medical evidence only one injury was noticed, as such there is variance between the medical evidence and ocular evidence and therefore, this witness cannot be believed.

In order to appreciate the arguments advanced by learned counsel for accused/appellant, we have examined the evidence of PW-7 Dr. M.K. Jain, who has stated that there was a big contusion and abrasion on right temporal zygomatic region and apart from that there was a blackness surrounding both the eyes. Doctor has further stated that there was a clotted blood behind both the eyes, frontal bone was fractured and there was intracranial clotted blood. The injury was homicidal in nature and sufficient to cause death in ordinary course.

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Looking to the nature of injury it is just possible that both assaults were made at the same place, therefore, the injury was in such a large area, moreover, doctor has not been cross-examined by learned counsel for the defence to show that such an injury cannot be caused by two assaults, therefore, we do not find any contradiction in the medical evidence and evidence of PW-5 Bukli Bai.

As far as the evidence of PW-2 Premanand regarding extra judicial confession made by accused before him is concerned, learned counsel for the accused/appellant argued that this witness has made improvement in the evidence before the court regarding the extra judicial confession, whereas in the statement under Section 161 of Cr.P.C. he has not stated so. However, we do not find any substance in this argument, for the reason that this witness has not been confronted with the statement made before the police, therefore, the statement recorded under Section 161 of Cr.P.C. cannot be looked into. Moreover, even if the statement recorded by the police under Section 161 is seen, in that statement this witness has categorically stated that Ratiram made extra judicial confession before him to the effect that Dhansai took the paddy of levy from him on loan and since he had not paid the amount, he had assaulted his son Anukram. There is little variance in connection with the paddy but the fact remains that in that statement also this witness has categorically stated that accused made extra judicial confession before him regarding assaulting Anukram with the spade. Parmanand is an independent witness and in his cross-examination defence has not been able to elicit any circumstance to

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show that he has deposed against the accused on account of some animosity or he is having any personal interest in Dhansai. Therefore, the evidence of this witness inspires confidence of the Court.

Learned counsel for the accused/appellant further argued that as per FSL report no blood was found on the weapon of offence i.e. spade, therefore, recovery of same cannot be connected with the accused. But even without circumstantial evidence regarding bloodstains on the spade, the case against the accused has been established by the ocular evidence of eyewitness namely Bukli Bai (PW-5) and extra judicial confession made by accused before Parmanand (PW-2). Therefore, for the forgoing reasons we are of the considered opinion that the trial court has not committed any illegality or infirmity in convicting the accused/appellant in connection with the crime in question.

Learned counsel further argued that there is nothing on record to show that the accused assaulted the deceased with the intention to cause his death, as the prosecution has not been able to bring forward any motive for commission of crime in question. Learned counsel placed reliance on the judgment of this Court in the matter of **Mohd. Akram Khan Vs. State of M.P. (now State of Chhattisgarh) reported in 2005 CG. Cr.J. 222.**

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, if we look into the evidence of PW-2 Premanand, before

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whom accused made the extra judicial confession, has categorically stated that on account of dispute with Dhansai regarding paddy of levy accused assaulted the deceased being the son of Dhansai, moreover, Dr. M.K. Jain (PW-7) has categorically stated that the injury was sufficient in ordinary course of nature to cause death and as the deceased boy was aged about 5 years and accused assaulted him on his head with spade as a result of which, as per medical report even frontal bone was fractured, the intention of the accused was writ large to commit the murder of deceased and as such, the judgment cited by learned counsel for the accused/appellant is of no help, as the same is distinguishable on facts.

In the result, we do not find any illegality or infirmity in the judgment of trial court convicting the accused/appellant for commission of offence under Section 302 of the I.P.C. The appeal being devoid of merit liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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